

**STATE OF MINNESOTA**  
*Before the*  
**Todd County Board of Commissioners**  
**SITTING AS THE DRAINAGE AUTHORITY FOR**  
**Todd County Ditch 41**

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**In the Matter of:**

**Order Authorizing the Use of  
Todd County Ditch 41 as an Outlet  
and Setting Outlet Fee**

**ORDER**

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**WHEREAS**, Lake Shamineau Lake Improvement District (the “LSLID”) filed the PETITION FOR AN OUTLET TO TODD COUNTY DITCH 41 on March 8, 2021, attached as **Exhibit A** (the “Petition”), with the Todd County Board of Commissioners acting as the drainage authority for Todd County Ditch 41 (the “Drainage Authority”) to construct and install a mechanical pumping system that will outlet waters from Lake Shamineau (the “LSLID Project”) into Todd County Ditch 41;

**WHEREAS**, the LSLID Project will reduce and maintain the height of the water in Lake Shamineau down to its Ordinary High Water Level (“OHWL”);

**WHEREAS**, under Minn. Stat. § 103E.401, before draining property into a legal ditch, the property owner must first petition the Drainage Authority to obtain express authorization to use the ditch as an outlet;

**WHEREAS**, upon receipt of the Petition, the Drainage Authority scheduled an informational meeting on June 1, 2021, at the Todd County Expo Building located at the Todd County Fairgrounds, 203 9th St. NE, Long Prairie, MN 56347 and held such meeting to provide the public and the Drainage Authority information regarding the Petition;

**WHEREAS**, the Drainage Authority scheduled a public hearing on June 29, 2021, at the Todd County Expo Building located at the Todd County Fairgrounds, 203 9th St. NE, Long Prairie, MN 56347 and gave notice by mail and publication in conformance with Minn. Stat. § 103E.401;

**WHEREAS**, the Drainage Authority continued the June 29, 2021, hearing until August 31, 2021, to provide additional time for public comments and to have its engineer, Bolton & Menk, provide an analysis relating to the capacity of Todd County Ditch 41;

**WHEREAS**, the Drainage Authority held the continued public hearing on August 31, 2021, at 221 1<sup>st</sup> Ave. South, Long Prairie, MN 56347 and gave notice by mail and publication in accordance with Minn. Stat. § 103E.401;

**WHEREAS**, at the hearing on August 31, 2021, the Drainage Authority's Board (the "Board") was read Minn. Stat. § 103E.401, subd. 4 by its Drainage Attorney and first considered the capacity of Todd County Ditch 41 as an outlet;

**WHEREAS**, Bolton & Menk, the Drainage Authority Engineer, provided the Board with a written report and oral testimony that Todd County Ditch 41 in its current condition has sufficient capacity as an outlet for the lake outlet project described in the Petition and the drainage will not adversely affect Todd County Ditch 41 when operating in conformance with the LSLID Operating Plan (further described and defined below). All those interested in testifying were given an opportunity to be heard;

**WHEREAS**, Bolton & Menk also reviewed the LSLID's proposed operating plan for the LSLID Project relating to the time periods, conditions, and triggers for pumping water from Lake Shamineau to Todd County Ditch 41 (the "LSLID Operating Plan") and provided the LSLID comments and suggested revisions to the LSLID Operating Plan;

**WHEREAS**, the LSLID has incorporated all of Bolton & Menk's comments into the LSLID Operating Plan and Bolton & Menk has confirmed that the updated version of the LSLID Operating Plan is acceptable;

**WHEREAS**, upon completion of testimony from those in attendance and the presentation of Bolton & Menk, the Board closed the public hearing; and

**WHEREAS**, on September 14, 2021, the Board provided terms and conditions for the use of Todd County Ditch 41 as an outlet and established the outlet fee for use of Todd County Ditch 41.

**NOW, THEREFORE, IT IS ORDERED THAT:**

**ORDER**

Upon motion duly made by Commissioner Kircher, seconded by Commissioner Erickson, and unanimously carried, it is hereby ordered, pursuant to Minn. Stat. § 103E.401, as follows:

1. The LSLID is a political subdivision of the State of Minnesota and will operate and construct the "LSLID Project" in accordance with the terms and conditions of this Order.
2. Bolton & Menk has concluded that there is sufficient capacity in Todd County Ditch 41 for the LSLID Project to outlet into Todd County Ditch 41.
3. Bolton & Menk has concluded that the LSLID Operating Plan is sufficient and ensures that the operation of the LSLID Project will not result in increased flooding within Todd County Ditch 41.
4. The Petition is granted and the LSLID Project discharge point, located in the SE1/4 of the NE1/4 of Section 23, Township 132, Range 32, Todd County, MN, (the "LSLID Project Discharge Point") is approved, and LSLID is hereby given the express authority to use Todd County Ditch 41 as an outlet, subject to the following terms and conditions:

- A. The LSLID must obtain all permits required for construction of the LSLID Project prior to constructing the LSLID Project Discharge Point. The LSLID will provide the Drainage Authority staff copies of all required permits.
- B. The LSLID must comply with the terms and conditions of the Morrison County Resolution approved on May 5th, 2021, and attached as **Exhibit B**.
- C. The LSLID must pay the costs of the hearings, notices, and legal and engineering costs incurred by Todd County during the review and approval of LSLID's Petition.
- D. The LSLID Operating Plan attached as **Exhibit C** is approved, subject only to any changes or requirements imposed by the Minnesota Department of Natural Resources.
- E. The LSLID will strictly follow the LSLID Operating Plan whenever it operates the LSLID Project.
- F. The LSLID Operating Plan must be reviewed and approved by the Minnesota Department of Natural Resources prior to the LSLID commencing construction of the LSLID Project.
- G. After the reviews and approvals by the Minnesota Department of Natural Resources contemplated in condition F above, any future changes and/or amendments to the LSLID Operating Plan, aside from changes and/or amendments made for housekeeping purposes, must be approved by both the Drainage Authority and the Minnesota Department of Resources prior to the change or amendment being implemented.
- H. The LSLID will utilize electronic technology that may include alert technology, and posting to its website, as reviewed by the Drainage Authority staff and Todd County's Public Works Engineer, to provide the data and information to Todd County as required by the LSLID Operating Plan.
- I. The LSLID Project shall not substantially impact Todd County Ditch 41 or lateral ditches to Todd County Ditch 41. For the purposes of this Order, the phrases "substantially impact" or "substantially impacted" mean operations of the LSLID Project that are or were outside of the operational parameters set forth in the LSLID Operating Plan. The LSLID, the Todd County Coordinator, the Drainage Authority staff, and the Todd County Engineer shall meet, either in person or virtually as determined in their discretion, three (3) years after Actual LSLID Project Operation begins, as defined herein, to review operations of the LSLID Project and to determine (i) if the LSLID Project has substantially impacted Todd County Ditch 41 or the lateral ditches to Todd County Ditch 41, and (ii) if amendments or modifications should be made to the LSLID Operating Plan. The Todd County Coordinator will submit a report regarding the above referenced meeting and determinations to the Todd County Commission sitting as the Drainage Authority.

- J. The LSLID must secure and maintain general liability insurance in the minimum amount of \$1,000,000 per occurrence for any damage caused to Todd County Ditch 41 by the operation of the LSLID Project. The LSLID will provide the Drainage Authority with a copy of the general liability insurance policy prior to commencing construction of the LSLID Project.
  - K. The LSLID Project shall be operated by the LSLID.
  - L. The LSLID will take appropriate action to levy an annual charge sufficient to provide funds for the maintenance, operation, insurance requirements, and management of the LSLID Project.
  - M. The LSLID will reimburse Todd County for reasonable time and cost incurred by the Todd County Ditch Inspector and the Todd County Coordinator and any reasonable engineering fees incurred by the Todd County Public Works Engineer arising out of Todd County's ongoing monitoring and enforcement of this Order.
5. The outlet fee for the LSLID Project is \$30,000 per year for three (3) consecutive years (hereinafter referred to as the "Initial Outlet Fee") and is initially due not less than ten (10) calendar days prior to the first Actual LSLID Project Operation and is thereafter due not less than ten (10) calendar days prior to the first and second anniversaries of the first date of Actual LSLID Project Operation. The Initial Outlet Fee meets all of the LSLID's obligations under Minn. Stat. chapter 103E and has been established to provide monies to fund any actual damage to Todd County Ditch 41 or to the laterals to Todd County Ditch 41 caused by the LSLID Project, if the LSLID Project does not operate in accordance with the LSLID Operating Plan. After the first three (3) years of Actual LSLID Project Operation, and once it has been determined if amendments or modifications should be made to the LSLID Operating Plan described in section 4(I) of this Order (referring to the review by the Todd County Coordinator, the Drainage Authority staff, and the Todd County Engineer), then the LSLID annual fee, which will not exceed \$30,000, shall be reduced to an amount equal to any actual damages to Todd County Ditch 41 and the lateral ditches to Todd County Ditch 41, which have been verified by the Drainage Authority Engineer to have been caused by the LSLID Project during the prior year of operation and paid at the end of each year of Actual LSLID Operation. The first annual payment of the Initial Outlet Fee must be paid before the LSLID is permitted to undertake Actual LSLID Project Operation. Failure of the LSLID to pay the first Initial Outlet Fee before Actual LSLID Project Operation of the LSLID Project commences may result in the Board taking legal action against the LSLID. For purposes of this Order, the term Actual LSLID Project Operation means that the LSLID Project is in actual operation and is pumping water from Lake Shamineau to Todd County Ditch 41 for a period exceeding twenty-four (24) continuous hours. Todd County acknowledges that each year the LSLID may have to run the LSLID Project for a period of less than twenty-four (24) hours in order to perform routine maintenance activities, in conformance with the LSLID Operating Plan.
6. The LSLID may prepay the entire amount of the Initial Outlet Fee (\$90,000) not less than ten (10) calendar days prior to first Actual LSLID Project Operation.

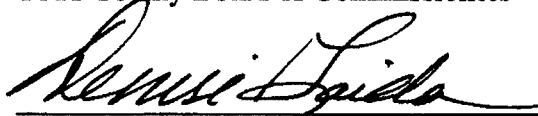
7. The failure of the LSLID to comply with the terms and conditions of this Order may result in legal action by the Board against the LSLID.

Dated: 10-13-21



Barb Becker, Chair  
Todd County Board of Commissioners

Dated: 10-13-21



Denise Gaida, Todd County Auditor-Treasurer